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**PATENT****Atty. Docket No.: M-1103 US**

5

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants: Loren Lantz  
10 Serial No.: 10/538,314  
Filed: June 13, 2005  
PCT No.: PT/US03/00224  
15  
Examiner: Gail Kaplan Verbitsky  
Art Unit: 2859  
Confirmation No.: 4108  
PCT Filing Date: January 6, 2003

For: **TYMPANIC THERMOMETER PROBE COVER**

**CERTIFICATE OF MAILING**

I hereby certify that this reply and the 01 Interview Summary of Oct 26, 2006 for a total of 10 pages is being faxed to the USPTO to (571) 273-8300 on the date shown: **Mail Stop Amendment**, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on:

By: Edward S. Jarmolowicz  
Edward S. Jarmolowicz

11-8-06  
Date

20

**AMENDMENT**

MAIL STOP AMENDMENT  
Commissioner for Patents  
P.O. Box 1450  
25 Alexandria, VA 22313-1450

Dear Examiner Verbitsky:

30 In response to an Office Action dated September 21, 2006, and the  
Examiner Interview dated October 26, 2006, please consider the following remarks  
set forth below. Thank you for the interview.

Sincerely Yours,

Edward S. Jarmolowicz  
Edward S. Jarmolowicz

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**WHAT IS CLAIMED IS:**

1. (Currently Amended) A probe cover comprising:

a tubular body extending from a proximal end to a distal end, the proximal end defining an opening configured for receipt of a distal end of a thermometer, and

5 the distal end of the tubular body being substantially enclosed by a film, the distal end including a plurality of non-continuous end ribs ~~at least one end rib~~ disposed in circumferentially spaced relation about an inner circumferential surface ~~of the tubular body circumference thereof~~, the ribs being ~~at least one end rib~~ configured to engage the distal end of the thermometer such that the distal end of  
10 the thermometer is spaced apart from the film.

2. (Original) A probe cover as recited in claim 1, wherein an outer circumference of the distal end of the body has an arcuate surface.

3. (Cancelled)

4. (Currently Amended) A probe cover as recited in claim 1, wherein the  
15 end ribs includes a transverse portion disposed along a surface of the film.

5. (Currently Amended) A probe cover as recited in claim 1, wherein the end ribs includes a longitudinal portion extending along the body.

6. (Currently Amended) A probe cover as recited in claim 1, wherein the end ribs includes a longitudinal portion extending proximally along the body and a  
20 transverse portion projecting along a surface of the film such that the longitudinal portion and the transverse portion cooperate to receive the distal end of the thermometer.

7. (Original) A probe cover as recited in claim 1, wherein the body defines at least one longitudinal rib projecting from an inner surface thereof and being proximally spaced from the distal end of the body.

8. (Original) A probe cover as recited in claim 1, wherein the body defines a plurality of longitudinal ribs projecting from an inner circumferential surface thereof, the longitudinal ribs being proximally spaced from the distal end of the body.

9. (Original) A probe cover as recited in claim 8, wherein the longitudinal ribs are configured to facilitate nesting of a second probe cover.

10. (Original) A probe cover as recited in claim 1, wherein the body defines at least one protuberance projecting from an inner surface thereof, the least one protuberance being proximally spaced from the distal end of the body.

11. (Original) A probe cover as recited in claim 1, wherein the body defines a plurality of protuberances projecting from an inner circumferential surface thereof, the plurality of protuberances being proximally spaced from the distal end of the body.

12. (Original) A probe cover as recited in claim 11, wherein the protuberances are configured to facilitate nesting of a second probe cover.

13. (Original) A probe cover as recited in claim 1, wherein the body defines at least one protuberance projecting from an outer surface thereof, the at least one protuberance being proximally spaced from the distal end of the body.

14. (Original) A probe cover as recited in claim 1, wherein the body defines a plurality of protuberances projecting from an outer circumferential surface thereof,

the plurality of protuberances being proximally spaced from the distal end of the body.

15. (Original) A probe cover as recited in claim 14, wherein the protuberances are configured to facilitate nesting of a second probe cover.

5 16. (Original) A probe cover as recited in claim 15, wherein the body defines a plurality of protuberances projecting from an inner surface thereof and being proximally spaced from the distal end of the body, the protuberances being configured to facilitate nesting with a third probe cover.

17. (Original) A probe cover as recited in claim 1, wherein the body extends  
10 in a tapered configuration from the proximal end to the distal end.

18. (Currently Amended) A probe cover comprising:

a tubular body portion extending in a tapered configuration from a proximal end to a distal end, the proximal end defining an opening configured for receipt of a distal end of a tympanic thermometer, and

15 the distal end being substantially enclosed by a film and including a plurality of non-continuous end ribs being circumferentially spaced apart and disposed about an inner circumferential surface ~~circumference~~ thereof,

the end ribs having a longitudinal portion extending proximally along the body portion and a transverse portion projecting along a transverse surface of the  
20 film, the longitudinal portion and the transverse portion being configured to receivably engage the distal end of the tympanic thermometer for support therein such that the distal end of the tympanic thermometer is spaced apart from the film.

19. (Cancelled) ~~A probe cover comprising:~~

~~a tubular body portion extending in a tapered configuration from a proximal end to a distal end, the proximal end defining an opening configured for receipt of a tympanic thermometer, and~~

5       ~~the body portion defining a plurality of protuberances projecting from an inner surface and an outer surface of the body portion, the protuberances being proximally spaced from the distal end and disposed circumferentially in a spaced relation about a wall of the body portion, the protuberances disposed on the outer surface being configured to facilitate nesting of a second probe cover and the~~  
10 ~~protuberances disposed on the inner surface being configured to facilitate nesting with a third probe cover.~~

20. (Cancelled).

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Summary of Examiner Interview – MPEP 713.04

5 The Applicant appreciates the Examiner taking time to interview and discuss the present application. We discussed obtaining a claim directed to a plural of ribs spaced about the distal end of the tubular body of the probe cover to overcome U.S. Patent No. 5,795,076 to Fraden. The Applicant further accepts the Examiner's addition limitation of "non-continuous". The Applicant respectfully suggests the above summary covers the substance of our interview per MPEP 713.04.

10 Please consider the further remarks in this Reply to the non-Final Office Action mailed September 21, 2006. Claims 1-20 are pending in the application. Claims 1, 18, and 19 are in independent form. Claims 3 and 20 are cancelled. Claim 19 is cancelled without prejudice and will be filed in a divisional, at later date. The Applicant reduced the claim set to that discussed at the 26OCT06 Interview to  
15 help facilitate allowance.

Response to Paragraph 2 of the Office Action

In the Office Action, claims 1-6, 17-18 and 20 were found to lack novelty under 35 U.S.C. section 102(b) as being anticipated by U.S. Patent No. 5,795,067 to Fraden et al. (Fraden '067). However, it is respectfully submitted that  
20 independent amended claim 1, claims 2, 4-6 and 17 depending therefrom, and independent amended claim 18 meet the requirements for novelty, and patentably distinguish over the Fraden '067 patent, as amended based on the Examiner's Interview and further limitation provided in the Interview Summary.

Referring to FIGS. 3 and 7 reproduced below, the Fraden '067 patent shows  
25 a probe cover 8 having a film window 10 (col. 6, lines 1-3). Window 10 forms a recess including a first fold 12 and a second fold 16, or annular flange, that is disposed about the periphery of window 10, adjacent a sidewall 31 (col. 7, lines 4-17).



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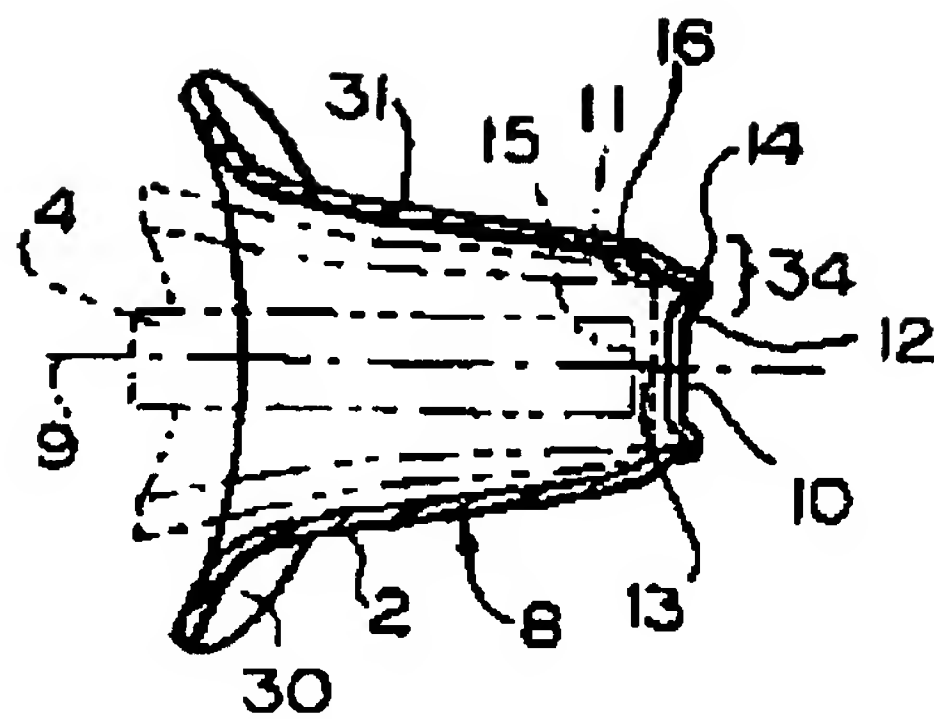


FIG. 3

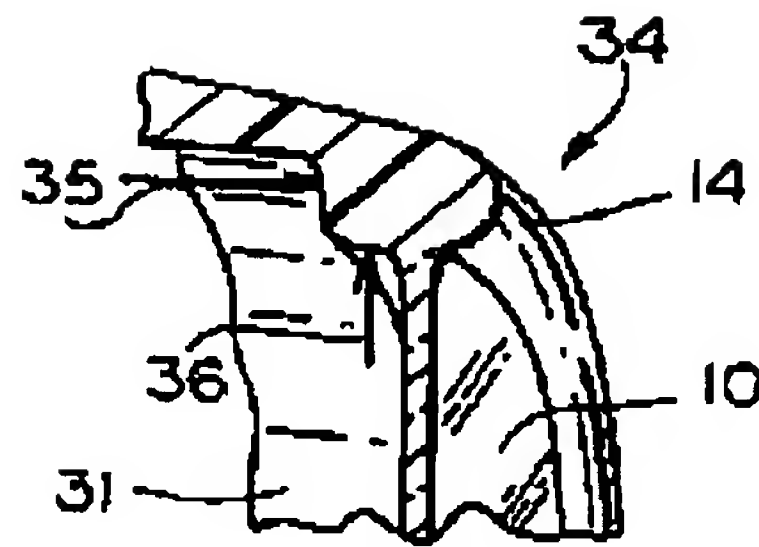


FIG. 7

In contrast, independent amended claim 1 recites, *intra alia*, "[a] tubular body extending from a proximal end to a distal end, ... the distal end including a plurality of non-continuous end ribs disposed in circumferentially spaced relation about an inner circumferential surface of the tubular body, the ribs being configured to engage the distal end of the thermometer such that the distal end of the thermometer is spaced apart from the film."

Independent amended claim 18 recites, *inter alia*, "a tubular body portion ... and the distal end being substantially enclosed by a film and including a plurality of non-continuous end ribs being circumferentially spaced apart and disposed about an inner circumferential surface thereof, the end ribs having a longitudinal portion extending proximally along the body portion and a transverse portion projecting along a transverse surface of the film, ... such that the distal end of the tympanic thermometer is spaced apart from the film."

The Fraden '067 patent does not disclose or suggest structure as recited in amended claims 1 and 18. The Fraden '067 patent does not disclose, *inter alia*, a probe cover having a distal end that includes a plurality of non-continuous end ribs being disposed in a circumferentially spaced relation about an inner circumferential surface thereof, wherein the ribs are configured to engage the distal end of a thermometer such that the distal end of the thermometer is spaced apart from the film. Rather, the Fraden '067 patent shows an annular flange that is continuous

around the perimeter of the probe cover wall. Figure 5 of Fraden '067 teaches and discloses radially spaced annular flanges. The Fraden flanges are not in a circumferentially spaced relation about the inner circumference of the tubular body. A flange is not a plural of circumferentially spaced end ribs as claimed.

- 5        Because of the above distinctions, it is respectfully submitted that independent amended claim 1, claims 2, 4-6 and 17 depending therefrom, and independent amended claim 18 are not anticipated by the Fraden '067 patent.

Response to Paragraph 3 of the Office Action

- 10        In the Office Action, independent claim 19 was found to be anticipated by U.S. Patent No. 6,238,088 to Wu (Wu '088). The Applicant cancelled independent claim 19 without prejudice. Applicant respectfully will not respond at this time.

Response to Paragraph 5 of the Office Action

- 15        In the Office Action, claims 7-16 were found to obvious over the Fraden '067 patent in view of the Wu '088 patent. However, it is respectfully submitted that independent amended claim 1 and claims 7-16 ultimately depending therefrom, are not obvious, and clearly and patentably distinguish over the Fraden '067 patent in any combination with the Wu '088 patent.

- 20        The Fraden '067 patent and the Wu '088 patent have been discussed. The Fraden '067 patent and the Wu '088 patent in no way disclose or suggest structure as recited in claim 1. The Wu '088 patent does not cure the deficiencies of the Fraden '067 patent in that the Fraden '067 patent and the Wu '088 patent do not disclose, *inter alia*, a probe cover having a distal end that includes a plurality of non-continuous end ribs have a space therebetween and disposed about an inner circumferential surface thereof, wherein the ribs are configured to engage the distal end of a thermometer such that the distal end of the thermometer is spaced apart from the film.
- 25

Because of the above distinctions, it is respectfully submitted that independent amended claim 1 and claims 7-16 ultimately depending therefrom are patentable and not obvious over the Fraden '067 patent in any combination with



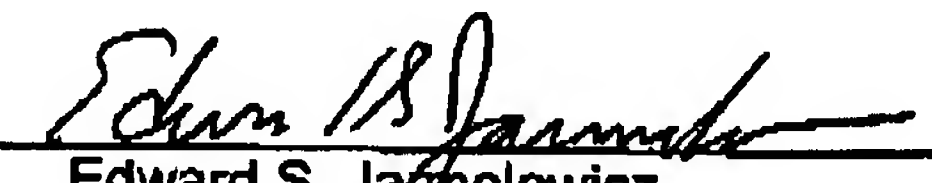
the Wu '088 patent. Support for circumferentially spacing the plurality of non-continuous end ribs about the inner surface of the tubular body portion, at the distal end of the probe cover is found in Figure 7 of the present invention.

5 In view of the foregoing amendments and remarks, it is respectfully submitted that claims 1, 2, 4-18 presently pending in the application are believed to meet the criteria for novelty and non-obviousness and are believed to be in condition for allowance and patentably distinguish over the art of record. If the Examiner should have any questions concerning this communication, please call the Applicant's undersigned attorney.

10

Respectfully submitted,

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<b>Interview Summary</b>	Application No.	Applicant(s)	
	10/538,314	LANTZ ET AL.	
	Examiner	Art Unit	
	Gail Verbitsky	2859	

All participants (applicant, applicant's representative, PTO personnel):

(1) Gail Verbitsky (3) \_\_\_\_\_

(2) Mr. Yarmalowicz (4) \_\_\_\_\_

*Spent Nov 7, 2006.*

Date of Interview: 28 October 2006.

Type: a) ☒ Telephonic b) ☐ Video Conference  
 c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☐ No.  
 If Yes, brief description: \_\_\_\_\_

Claim(s) discussed: 1, 18 and 20.

Identification of prior art discussed: \_\_\_\_\_

Agreement with respect to the claims f) ☒ was reached. g) ☐ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: applicant will amend claims 1 and 18 to include the limitation comprising plurality of non-continuous end ribs (having spacing). applicant will cancel claim 20.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

**GAIL VERBITSKY  
PRIMARY EXAMINER**

*[Signature]*

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

Examiner's signature, if required